

CENTRAL FAX CENTER

JUL 06 2009

IN THE UNITED STATES PATENT & TRADEMARK OFFICE

Application No.: 10/590,879
Filed: 27 August 2006
By: Buck, Hieronymus Bela
For: Support Device for the Cultivation
of Microorganisms...

Examiner: O'Hara, Brian M
Group Art Unit: 3644
Confirmation No. 2916

P.O. Box 381516
Cambridge MA 02238-1516
5 July 2009

Hon.
Commissioner for Patents
P.O. Box 1450
Alexandria VA 22313-1450

Request for Reconsideration of Holding of Abandonment

Sir:

Not having had a response to his petition received by the Patent and Trademark Office on 26 March 2009, the undersigned attorney reviewed the Office entries in the Private PAIR system and found, and printed out, a dismissing decision allegedly mailed 5 May 2009.

The said Office entries also indicate that a change of power of attorney has been recorded. Nevertheless the undersigned attorney deems it necessary to request reconsideration of the dismissing decision.

The attorney agrees that "in the absence of any irregularity in the mailing, there is a strong presumption that the Notice was properly mailed to the address of record." With respect, it appears that Senior Petitions Examiner Wood has misunderstood the issue presented in the petition of 26 March 2009.

The fact, as stated in the petition, is that whilst the Notice of Allowance dated 23 October 2008 was indeed received it was not received, as immediately notified the Patent and Trademark Office by the attorney's letter of 5 March 2009, *until 5 March 2009*. That does not necessarily imply any irregularity in the

Attorney Docket 0640-US

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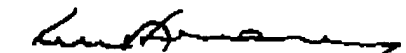
mailing of the Notice by the Office. But irregularity clearly occurred during the interval spanning the time the Notice left the Office and the day of its receipt by the undersigned attorney. Neither the Patent Office nor the attorney had any control over the Notice. Since the Notice was received the rules requiring that a petitioner "must state that the Office Action was not received at the correspondence address of record, and that a search of the practitioner's record, including any file jacket or the equivalent, and the application contents, indicates that the Office action was not received" do not apply in the instant case. In paragraph 3 of his Petition, the Practitioner did describe his system used for recording incoming Office actions.

It is earnestly urged that in the circumstances described, the Attorney not only used due diligence but, in notifying the Office by letter of 5 March 2009 of the late receipt of the Notice of Allowance, did everything he reasonably could to forestall abandonment of the instant application.

As indicated above, knowledge of the decision dismissing the Attorney's petition was obtained by consulting the Private Pair System. A diligent search of the attorney's records, the file jacket of the instant application, and the docket calendar clearly demonstrate that the Petition has not been received by Post or any other means.

In the practitioner's opinion, the dismissal of his Petition was erroneous and should be reversed; the instant application should be revived and late payment of the issue and publication fees should be accepted.

Respectfully submitted,



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